



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

July 21, 1993

Ms. Johnette Hicks
Executive Director
Economic Opportunities
Advancement Corporation
Planning Region XI
500 Franklin
Waco, Texas 76701-2111

OR93-472

Dear Ms. Hicks:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), article 6252-17a, V.T.C.S. Your request was assigned ID#'s 13441 and 20206.

The Economic Opportunities Advancement Corporation ("EOAC") has received two requests for information relating to allegations of sexual harassment. One of the requestors seeks:

- 1) A copy of each complaint of sexual harassment filed against Head Start Director Joe Rodriguez.
- 2) A copy of any reprimands, notices of probation or other disciplinary action taken against Mr. Rodriguez within the last year.

The other requestor seeks "information contained within the file of Mr. Joe Rodriguez," including "copies of any and all complaints contained within said file or files." You have submitted to us for review three documents which you believe are responsive to the request. These documents include a memorandum dated March 1, 1991; a memorandum dated June 13, 1991; and a "Supervisor Action Report" with accompanying "Disciplinary Action Form" dated July 29, 1991. You contend that these documents are excepted from required public disclosure under sections 3(a)(2), 3(a)(3), and 3(a)(11) of the act. You further claim that, as a nonprofit organization, you are not a governmental body and therefore are not subject to the act.

As a threshold issue, we first address whether the EOAC is a "governmental

body" within the meaning of section 2(1) of the Open Records Act. Section 2(1)(G) of the act defines a governmental body to include

the part, section, or portion of every organization, corporation, commission, committee, institution, or agency which is supported in whole or in part by public funds, or which expends public funds. Public funds as used herein shall mean funds of the State of Texas or any governmental subdivision thereof.

In Open Records Decision No. 228 (1979), this office ruled that a private, nonprofit corporation that received general support from the city and promoted the interests of the area was subject to the act. *See also* Open Records Decision Nos. 509 (1988); 201, 195 (1978).

You advise us that the EOAC receives all of its funding from governmental entities at the local, state, and federal level. Specifically, you advise that your organization operates with funds provided by the Texas Department of Community Affairs, the Texas Department of Human Services, and the U.S. Department of Health and Human Services. You also advise us that your organization provides services almost exclusively to the government. Such services include a Head Start Program, childcare management, homeless programs, and energy assistance for the elderly. Because your organization is supported by and expends public funds as defined by section 2(1)(G), it must be considered a governmental body for purposes of the Open Records Act.

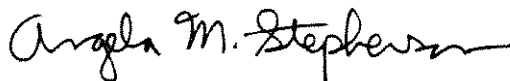
Under the act, all information held by a governmental body is open unless it falls within one of the act's specific exceptions to disclosure. You claim that the requested information is excepted from required public disclosure by section 3(a)(3). To secure the protection of section 3(a)(3), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). In this instance you have made the requisite showing that the requested information relates to pending litigation for purposes of section 3(a)(3); the requested records may therefore be withheld.

In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 3(a)(3) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 3(a)(3). We also note that the applicability of section 3(a)(3) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Because case law and prior published open records decisions resolve your request,

we are resolving this issue with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Angela M. Stepherson
Assistant Attorney General
Open Government Section

AMS/GCK/jmn

Ref.: ID# 13441
ID# 13631
ID# 20206

Enclosures: Submitted documents

cc: Mr. Brian Blansett
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(w/o enclosures)